

# CITY COUNCIL REPORT



Meeting Date: July 5, 2016  
 General Plan Element: *Provide for the orderly administration of the affairs of the City*  
 General Plan Goal: *Fiscal management*

## ACTION

Consider adopting Resolution No. 10526 authorizing the City's Risk Management Department to continue to pay the law firm of Udall Shumway PLC pursuant to Contract No. 2015-032-COS for the legal defense of the City in the case of *Nicole Rerucha v. City of Scottsdale*, currently pending in the United States District Court, District of Arizona, Case Number No. CV-15-01145-PHX-NVW, in an amount not to exceed an additional amount of \$50,000 (total \$100,000).

## Background

Nicole Rerucha, a former employee medically separated from the City's employment brought suit against the City alleging wrongful termination and discrimination. The City denies liability.

The *Rerucha* case was sent to Udall Shumway PLC to represent the City pursuant to a pre-existing contract for legal services in risk litigation matters, Contract No. 2015-032-COS. This contract was approved by the City Council and provides that legal fees should not exceed \$50,000 in any single case without further approval by the City Council. The *Rerucha* case has been in litigation for some time, and after several depositions, the costs and expenses will exceed the pre-approved \$50,000 amount. This matter is, therefore, being returned to Council for further approval of additional attorney's fees and costs in an amount not to exceed an additional amount of \$50,000 (total \$100,000).

## ANALYSIS & ASSESSMENT

### Recent Staff Action

Staff from the City Attorney's office, the Scottsdale City Court, and HR departments have provided assistance to outside counsel in this case.

### Policy Implications

The policy of the City Attorney's office is to handle litigation in house except when (a) specialized expertise not available in the office is required, (b) the office is precluded from providing representation either because there is a conflict of interest or there is some other reason why it would be detrimental to the City for the case to be retained by the office, or (c) resources beyond those available to the office are required. Pursuant to the City Attorney's outside counsel policy, and after consulting with the Risk Management Department, a decision was made to send this case to outside counsel for further handling. In this circumstance the City Attorney's office worked on the underlying employment action which creates difficulty in later defending the resulting employment case and falls within the policy parameters for the use of outside counsel.

As stated above, the Council had previously approved a Contract for Legal Services (Contract No. 2015-032-COS) between the City and Udall Shumway PLC for the City's legal representation, should this type of situation arise. Pursuant to the contract already in place, this case was sent to Udall Shumway PLC for the City's representation in the litigation.

### **Significant Issues to be Addressed**

The fiscal well-being of the City requires the highest quality defense in litigation brought against the City. Because it is important to maintain consistent representation in a case to avoid duplication of legal work and analysis that has already been performed, the City Attorney recommends that this case continue to be represented by Udall Shumway PLC.

### **Community Involvement**

No community involvement is necessary on this item.

## **RESOURCE IMPACTS**

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### **Available funding**

Funding is available in the Risk Management operating budget.

### **Staffing, Workload Impact**

Udall Shumway PLC is a Phoenix-based law firm with the requisite expertise. A Deputy City Attorney and a paralegal from the City Attorney's office are also assigned to this case in order to help control costs.

### **Future Budget Implications**

No further budget outlays in connection with this representation are anticipated at this time.

### **Cost Recovery Options**

None at this time.

## **OPTIONS & STAFF RECOMMENDATION**

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### **Recommended Approach**

Adopt Resolution No. 10526 authorizing legal fees to be incurred in Contract No. 2015-032-COS with Udall Shumway PLC in an amount not to exceed an additional amount of \$50,000 (total \$100,000) for the legal defense of the City and its employees in *Rerucha v. City of Scottsdale*, currently pending in United States District Court, District of Arizona, Case Number No. CV-15-01145-PHX-NVW.

### **Description of Option B**

Not approve Resolution No.10526 and not retain the services of Udall Shumway PLC.

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### Proposed Next Steps

If the contract is approved the law firm of Udall Shumway PLC will continue to provide legal services in the City's defense of *Rerucha v. City of Scottsdale*.

### RESPONSIBLE DEPARTMENT(S)

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Risk Management  
City Attorney's Office

### STAFF CONTACTS (S)

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Katherine Callaway, Risk Management Director, [kcallaway@scottsdaleaz.gov](mailto:kcallaway@scottsdaleaz.gov)  
Bruce Washburn, City Attorney, [bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

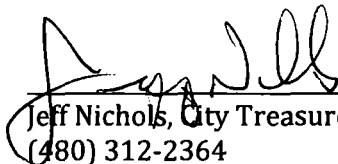
### APPROVED BY

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Bruce Washburn, City Attorney  
(480) 312-2405  
[bwashburn@scottsdaleaz.gov](mailto:bwashburn@scottsdaleaz.gov)

6/24/16  
Date



Jeff Nichols, City Treasurer  
(480) 312-2364  
[jenichols@scottsdaleaz.gov](mailto:jenichols@scottsdaleaz.gov)

6/27/16  
Date

### ATTACHMENTS

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1. Resolution No. 10526
2. Contract No. 2015-032-COS

RESOLUTION NO. 10526

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE CITY'S RISK MANAGEMENT DEPARTMENT TO CONTINUE TO PAY THE LAW FIRM OF UDALL SHUMWAY PLC, IN CONTRACT NO. 2015-032-COS, IN AN AMOUNT NOT TO EXCEED AN ADDITIONAL AMOUNT OF \$50,000 FOR THE DEFENSE OF RERUCHA V. CITY OF SCOTTSDALE CURRENTLY PENDING IN THE UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA.

WHEREAS, the City of Scottsdale previously entered into a Contract for Legal Services with the law firm of Udall Shumway PLC, Contract No. 2015-032-COS, to provide legal services for the City in certain litigation cases filed against the City; and

WHEREAS, this contract provides that attorney fees shall not exceed \$50,000 in any one case without the prior approval of the City Council; and

WHEREAS, a lawsuit, *Rerucha v. City of Scottsdale*, was filed and served against the City and sent to Udall Shumway PLC for legal services and representation; and

WHEREAS, the attorney's fees and costs in this case will, result in attorney's fees in excess of \$50,000; and

WHEREAS, the City Council has determined that it is in the best interest of the City to approve an additional amount of attorney's fees and costs to be paid in *Rerucha v. City of Scottsdale* not to exceed an additional amount of Fifty Thousand Dollars (\$50,000), not including amounts that have already been authorized to be paid under Contract No. 2015-032-COS.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:

Section 1. The City Council hereby authorizes an additional \$50,000 in attorney's fees and costs to be paid to Udall Shumway PLC for attorney's fees and costs incurred in defending the City in *Rerucha v. City of Scottsdale* as set forth in Contract No. 2015-032-COS.

PASSED AND ADOPTED by the Council of the City of Scottsdale, Maricopa County, Arizona this 5<sup>th</sup> day of July, 2016.


CITY OF SCOTTSDALE, an Arizona  
municipal corporation

ATTEST:

\_\_\_\_\_  
Carolyn Jagger, City Clerk

\_\_\_\_\_  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Bruce Washburn, City Attorney

**CONTRACT FOR LEGAL SERVICES  
CITY OF SCOTTSDALE  
Risk Management Division**

THIS CONTRACT is made and entered into on this 3<sup>rd</sup> day of February, 2015, by and between the **City of Scottsdale**, a municipal corporation, hereinafter called **CITY**, and the law firm of **Udall Shumway**, hereinafter called **COUNSEL**.

CITY having determined it to be in its best interest to contract with attorneys not in its employ who, by experience and training, are qualified to provide the CITY with representation in matters that may result in litigation, and

CITY having satisfied itself as to the qualifications of COUNSEL as named above.

NOW, THEREFORE, it is agreed between the parties as follows:

1. Scope of Service and Representation. COUNSEL agrees to perform all necessary legal services, including investigation, legal research, preparation of pleadings, legal memoranda and briefs, and appearances in court, in representing CITY after referral of a lawsuit to COUNSEL to handle. Such legal services shall be carried out in cooperation with the City Attorney's and Risk Management Offices which shall at all times be apprised of the status of all matters. No major decisions regarding the resolution of the legal issues or litigation, in whole or in part, shall be made without the prior approval of the City Attorney's and Risk Management Offices. All offers of compromise made by plaintiff(s) shall be promptly transmitted to CITY through its City Attorney's Office, together with COUNSEL's recommendations. CITY will be responsible for obtaining proper authority to accept a compromise or for obtaining authority to make a counter-offer. No appeals will be taken from judgments in any litigation without prior approval of CITY, acting through its City Attorney's Office.

2. Advice and Status Reporting. COUNSEL shall provide CITY with timely advice of all significant developments arising during performance of their services hereunder orally or in writing, as COUNSEL consider appropriate. COUNSEL shall provide copies of all pleadings and other documents prepared by COUNSEL, including research memoranda prepared by COUNSEL, unless they have been otherwise provided to the City Attorney's Office.

3. Compensation. CITY agrees to pay COUNSEL for services rendered hereunder as follows:

- A. One Hundred and Eighty Dollars and 00/100 cents (\$180.00) per hour for Senior Partner/Shareholder.
- B. One Hundred and Seventy Dollars and 00/100 cents (\$170.00) per hour for Senior Associate.
- C. One Hundred and Sixty Dollars and 00/100 cents (\$160.00) per hour for Junior Associate.
- D. Eighty Dollars and 00/100 cents (\$80.00) per hour for Paralegal.

All services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. CITY shall not be billed for use of COUNSEL's "runners," but may be billed for messenger service required when COUNSEL's runner is not available. The total attorneys' fees billed per individual case or matter under this contract **shall not exceed Fifty Thousand Dollars and 00/100 cents (\$50,000.00) without first obtaining the approval of the City Council.** Fees and expenses shall be billed on a monthly basis and paid by CITY within forty-five (45) days.

4. Term. The term of this Contract shall be for a one (1) year period commencing on the effective date of this Contract. CITY may extend this Contract for a maximum of four (4) more one (1) year periods upon the approval of the Contract Administrator and the City Attorney.

5. Price Adjustment.

A. Price increases may only be requested by COUNSEL thirty (30) days prior to the annual anniversary date of this Contract. Failure to do so may result in the denial of any increase requested.

B. Any increased rate shall be based upon mutual consent of COUNSEL and the Contract Administrator; however, the Contract Administrator, in conjunction with the City Attorney's Office, shall evaluate COUNSEL's performance, services and records documentation to determine the appropriateness of the increase requested.

C. Price increases will become effective only after approval by the Purchasing Director.

D. The percentage increase in the unit pricing may not exceed 5% per year.

6. Travel. Approval for travel shall be obtained through the Risk Management Office prior to departure. Travel time may be billed to CITY, with the exception of travel time to CITY to meet with CITY representatives or the City Council. "Reasonable expenses" means expenses not exceeding one hundred eighty five dollars (\$185.00) per night for hotel rooms, seventy-five dollars (\$75.00) per person per day for meals including gratuity, and for the rental charges of the most economical type of rental car available. Where possible, COUNSEL and consultants and experts and subcontractors shall stay at hotels that charge a government rate. When traveling by airplane, whenever possible, reduced fare tickets shall be purchased. Gasoline shall not be billed to CITY except when a rental car is used out-of-state.

7. Reimbursement for Expenses. All costs and other disbursements for outside services not specified hereinabove shall be billed at actual cost, plus employee related costs, if any. All copying charges shall be billed at no more than fifteen cents (\$.15) per page. To the extent practical, large photocopying tasks will be sent to an outside copy service in an effort to further reduce photocopying costs. Outgoing faxes shall be billed for actual long distance charges incurred, not on a per page basis. CITY shall not be billed for local faxes. On-line database retrieval charges (i.e., Lexis, Westlaw, CompuServe, Dialogue, etc.) shall be billed at actual cost.

8. Billing Procedures. In addition to the billing procedures set forth elsewhere in this Contract, COUNSEL shall follow these billing procedures:

A. "Unit billing" shall not be done. COUNSEL shall bill only for actual time spent on a task, and each task shall be itemized (e.g., tel. to opposing counsel (.2); extended tel. to Mr. Smith (.3); prepare motion to continue (.3)).

B. Secretarial, word processing or other overtime shall not be billed (e.g., preparation of documents which are computerized or on a form, such as subpoenas, notices of deposition, independent medical examinations, medical authorizations, trial notices, uniform interrogatories, and requests to produce); only the actual time spent by the attorney reviewing, revising or drafting such documents shall be billed.

C. Whenever possible, attorneys shall minimize time spent consulting with one another and agree to use their best efforts to minimize the costs of the legal representation to CITY. Work on this matter billed by attorneys not listed must be approved by the City Attorney's Office in advance.

D. All consultants, experts and subcontractors engaged to provide services to COUNSEL in the performance of this agreement, and the use and extent of those services, shall be approved by the City Attorney's Office prior to them providing the services. Payment of their expenses will be subject to the same terms as paragraphs 7 and 8 above.

E. COUNSEL will submit monthly billings for services rendered and expenses incurred, which shall be paid by the Risk Management Office. Each bill shall also contain, in addition to information required elsewhere in this Contract: 1) fees and costs incurred in the preceding month; 2) the cumulative total of fees and costs to date; 3) the unbilled amount remaining on the contract.

COUNSEL will use its best efforts to inform the Risk Management Office eight weeks prior to COUNSEL billing the final fees and costs authorized under this contract. CITY will pay no fees incurred over and above the contract amount without prior authorization from CITY.

9. Maintenance of Records. In compliance with CITY's standard procedure, all work performed in connection with this Contract shall be subject to audit. COUNSEL shall maintain all books, documents, papers, accounting records, and other evidence pertaining to time billed and to costs incurred on a particular lawsuit, and to make such materials available at their offices at all reasonable times during the Contract period and for at least three (3) years from the date of final payment for inspection by CITY or any authorized representatives of CITY, and copies thereof shall be furnished, if requested, at CITY's expense.

10. Conflict of Interest. COUNSEL warrants and covenants that COUNSEL presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of this Contract a violation of any applicable local, state, or federal law. In the event that any conflict of interest should nevertheless hereinafter arise, COUNSEL shall promptly notify CITY of the existence of such conflict of interest, so that CITY may determine whether to terminate this Contract. The City Attorney is authorized to grant customary conflicts waivers to COUNSEL on behalf of the CITY, as are not adverse to the CITY's legal interests in his professional judgment. Otherwise, COUNSEL shall be free to dispose of such portion of their entire time, energy and skill as are not required to be devoted to CITY in such manner as they see fit and to such persons, firms or corporations as they deem advisable so long as no conflict of interest exists.

11. Reporting Requirements.

A. Within sixty (60) days of receipt of a case, or at the time disclosure statements are first filed, whichever is sooner, COUNSEL shall provide CITY with an initial written evaluation containing the following:

1. A summary of the case's facts and issues;
2. An evaluation of the potential exposure;
3. An outline of the course of action COUNSEL intends to pursue in the case (e.g., names and/or categories of witnesses to be interviewed or deposed; experts to be retained; motions to be filed; etc.);
4. An estimate of the cost to defend the case through trial;
5. A cost/benefit analysis, including recommendations as to early settlement or offers of judgment; and
6. The name of the attorney who will be primarily responsible for handling the case, and the names of others who will assist that person.

B. COUNSEL shall furnish to CITY, through the City Attorney's and Risk Management Offices, copies of all pleadings, motions, disclosure statements, medical reports, investigative reports, and correspondence (other than routine transmittal letters). Depositions and answers to interrogatories shall be summarized promptly and furnished to CITY through the City Attorney's and Risk Management Offices. When, in COUNSEL's opinion, events occur which significantly affect the merits of the lawsuit or exposure of CITY, those events will be promptly made known to CITY through its City Attorney's and Risk Management Offices.

C. On a quarterly basis, COUNSEL shall send a brief "Quarterly Report" to the City Attorney's and Risk Management Offices setting forth the status of each case COUNSEL has assigned to it, including the trial date, the estimated percentage of liability and ultimate exposure, and settlement discussions, if any. CITY shall NOT be billed for the preparation of this report.

D. When a case is complete, COUNSEL shall send a "Final Report" summarizing the resolution of the case, and itemizing the total amount spent on fees, costs, expenses, etc. and, COUNSEL will endeavor, at the request of the Risk Management Office, to meet with CITY staff to discuss the case as it pertains to CITY staff's assigned responsibilities.

12. Additional Investigation. Whenever additional investigation is deemed desirable by COUNSEL and can be provided by use of non-attorney investigators, COUNSEL shall notify CITY through the City Attorney's Office of such need, and CITY may elect, at its option, to conduct such investigation. In this event, CITY shall be solely responsible for the accuracy of the facts or other information developed in response to such requests.

13. Termination. CITY may terminate this Contract upon giving ten (10) days written notice for convenience or cause. Any default by COUNSEL, if COUNSEL fails to comply with any of the conditions of this Contract, or services which provide unsatisfactory performance as



judged by the Contract Administrator and City Attorney, and failure to provide CITY, upon request, reasonable assurance of future performance, shall be causes allowing CITY to terminate this Contract. In the event of termination for cause, CITY shall not be liable to COUNSEL for any amount, and COUNSEL shall be liable to CITY for any and all damages sustained by reason of the default which gave rise to the termination. Any notice of cancellation shall specify the particular lawsuit or lawsuits to which it applies, and any lawsuit not particularly specified shall continue to be handled by COUNSEL and, as to those, this Contract will continue in effect; provided, however, the right is retained by CITY to terminate services on any lawsuit by notifying COUNSEL upon ten (10) days written notice.

14. Notices. When notice or correspondence is required to be sent to CITY, it shall be sent to the following:

City Attorney's Office  
City of Scottsdale  
3939 N. Drinkwater Blvd.  
Scottsdale, Arizona 85251  
Attn: Assistant City Attorney Assigned to Matter

Risk Management Division  
City of Scottsdale  
7447 E. Indian School Road, #225  
Scottsdale, Arizona 85251  
Attn: Claims Manager

15. Conflicts. COUNSEL may, upon referral of a lawsuit, decline to defend the lawsuit if it would be ethically improper for him/her to do so. COUNSEL also may withdraw from representation of CITY or any agency, officer, agent or employee thereof, when it would be ethically improper to continue to do so and upon the Court granting a motion permitting withdrawal. In the event COUNSEL must withdraw from a case, CITY, through its City Attorney's and Risk Management Offices, shall be immediately notified in writing.

16. Expert Witnesses. Expert witnesses shall be hired only after consultation with and approval of CITY through its City Attorney's and Risk Management Offices.

17. Appeals. No appeals will be taken from judgment in lawsuits referred to COUNSEL without prior approval of CITY, acting through its City Attorney's Office.

18. Lack of Appropriated Funds. If funds are not appropriated by the City Council to continue this Contract and for the payment of charges hereunder, CITY may terminate this Contract at the end of the current fiscal period. CITY agrees to give written notice of termination to COUNSEL at least thirty (30) days prior to the end of its current fiscal period, and will pay to COUNSEL all charges incurred through the end of such period.

19. Indemnification for Liability and Professional Liability.

To the fullest extent permitted by law, COUNSEL, its successors, assigns and guarantors, shall defend, indemnify and hold harmless CITY, its agents, representatives, officers, directors, officials and employees from and against all allegations, demands, proceedings, suits, actions, claims, damages, losses and expenses, including, but not limited to, attorneys' fees, court costs, the cost of appellate proceedings, and all claim adjusting and

handling expense, related to, arising from or out of or resulting from any negligent, or intentional actions, acts, errors, mistakes or omissions caused in whole or part by COUNSEL relating to work or services in the performance of this Contract, including but not limited to, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and any injury or damages claimed by any of COUNSEL's and Subcontractor's employees.

Insurance provisions set forth in this agreement are separate and independent from the indemnity provisions of this paragraph and shall not be construed in any way to limit the scope and magnitude and applicability of the Indemnity provisions. The indemnity provisions of this paragraph shall not be construed in any way to limit the scope and magnitude and applicability of the insurance provisions.

20. Insurance Representations and Requirements.

General: COUNSEL agrees to comply with all applicable City Ordinances and state and federal laws and regulations.

Without limiting any obligations or liabilities of COUNSEL, COUNSEL shall purchase and maintain, at its own expense, hereinafter stipulated minimum insurance with insurance companies duly licensed by the State of Arizona (admitted insurer) with an AM Best, Inc. rating of B ++ 6 or above or an equivalent qualified unlicensed insurer by the State of Arizona (non-admitted insurer) with policies and forms satisfactory to CITY. Failure to maintain insurance as specified may result in termination of this Contract at CITY's option.

No Representation of Coverage Adequacy: By requiring insurance herein, CITY does not represent that coverage and limits will be adequate to protect COUNSEL. CITY reserves the right to review any and all of the insurance policies and/or endorsements cited in this Contract but has no obligation to do so. Failure to demand such evidence of full compliance with the insurance requirements set forth in this agreement or failure to identify any insurance deficiency shall not relieve COUNSEL from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Contract.

Coverage Term: All insurance required herein shall be maintained in full force and effect until all work or services required to be performed under the terms of subject contract is satisfactorily performed, completed and formally accepted by the CITY, unless specified otherwise in this Contract.

Claims Made: In the event any insurance policies required by this Contract are written on a "claims made" basis, coverage shall extend, either by keeping coverage in force or purchasing an extended reporting option, for three (3) years past completion and acceptance of the work or services evidenced by submission of annual Certificates of Insurance citing applicable coverage is in force and contains the provisions as required herein for the three (3) year period.

Use of Subcontractors: If any work under this agreement is subcontracted in any way, COUNSEL shall execute written agreement with Subcontractor containing the same Indemnification Clause and Insurance Requirements set forth herein protecting CITY and COUNSEL. COUNSEL shall be responsible for executing the agreement with Subcontractor and obtaining Certificates of Insurance verifying the insurance requirements.

Evidence of Insurance: Prior to commencing any work or services under this Contract, COUNSEL shall furnish CITY with Certificate(s) of Insurance, or formal endorsements as required by this Contract, issued by COUNSEL's insurer(s) as evidence that policies are placed with acceptable Insurers as specified herein and provide the required coverages, conditions, and limits of coverage and that such coverage and provisions are in full force and effect. If a Certificate of Insurance is submitted as verification of coverage, CITY shall reasonably rely upon the Certificate of Insurance as evidence of coverage but such acceptance and reliance shall not waive or alter in any way the insurance requirements or obligations of this agreement. Such certificates shall identify the Contract work number and be sent to the designated CITY Contract Administrator. If any of the cited policies expire during the life of this Contract, it shall be COUNSEL's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates shall specifically cite the following provisions:

1. CITY, Its agents, representatives, officers, directors, officials and employees shall be named an Additional Insured under the following policies: a) Commercial General Liability; b) Auto Liability; and c) Excess Liability-Follow Form to underlying insurance as required.
2. COUNSEL's insurance shall be primary insurance as respects performance of subject contract.
3. All policies, except Professional Liability insurance, waive rights of recovery (subrogation) against CITY, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by COUNSEL under this contract.
4. Certificate shall cite 30-day advance notice of cancellation provision. If standard ACORD Certificate of Insurance form is used, the phrases in the cancellation provision "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives" shall be deleted. Certificate forms other than ACORD form shall have similar restrictive language deleted.

21. Required Coverage

Commercial General Liability: COUNSEL shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Professional Liability: If the Contract is the subject of any professional services or work, or if COUNSEL engages in any professional services or work adjunct or residual to performing the work under this Contract, COUNSEL shall maintain Professional Liability

insurance covering errors and omissions arising out of the work or services performed by COUNSEL, or anyone employed by COUNSEL, or anyone for whose acts, mistakes, errors and omissions COUNSEL is legally liable, with a liability insurance limit of \$1,000,000 each claim and \$1,000,000 all claims. In the event the Professional Liability insurance policy is written on a "claims made" basis, coverage shall extend for three (3) years past completion and acceptance of the work or services, and COUNSEL shall be required to submit Certificates of Insurance evidencing proper coverage is in effect as required above.

Vehicle Liability: COUNSEL shall maintain Business Automobile Liability insurance with a limit of \$1,000,000 each accident on COUNSEL's owned, hired, and non-owned vehicles assigned to or used in the performance of the COUNSEL's work or services under this Contract. Coverage will be at least as broad as Insurance Services Office, Inc. coverage code "1" "any auto" policy form CA 00 01 07 97 or equivalent thereof. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

Workers' Compensation Insurance: COUNSEL shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of COUNSEL's employees engaged in the performance of work or services under this Contract and shall also maintain Employers Liability Insurance of not less than \$500,000 for each accident, \$500,000 disease for each employee and \$1,000,000 disease policy limit.

22. Choice of Law. This Contract shall be governed and interpreted according to the laws of the State of Arizona.

23. Whole Agreement. This Contract constitutes the entire understanding of the parties, and no representations or agreements, oral or written, made prior to its execution shall vary or modify the terms herein.

24. Amendments. Any amendment, modification or variation from the terms of this Contract shall be in writing and shall be effective only after approval of all parties signing the original Contract. Should there be a change in the Contract Administrator, however, CITY will only need to notify COUNSEL in writing.

25. Non-Assignment. Services covered by this Contract shall not be assigned or sublet in whole or in part without the prior written consent of the City Attorney and Contract Administrator.

26. Contract Administrator. The Contract Administrator for CITY shall be the Risk Management Claims Manager or designee. The Contract Administrator shall oversee the execution of this Contract, assist COUNSEL in accessing the organization, audit billings and approve payments. COUNSEL shall channel reports and special requests through the Assistant City Attorney(s) assigned to COUNSEL's matter(s).

27. Cancellation. CITY may cancel any contract or agreement, without penalty or obligation, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of CITY's departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party of the contract in any capacity, or a consultant to any other party of the contract with respect to the subject matter of the contract. The cancellation shall be effective when written notice from CITY is received by all other parties to the contract, unless the notice specifies a later time (A.R.S. §

38-511).

28. Independent Contractor Status. The services COUNSEL provides under the terms of this Contract to CITY are that of an independent contractor, not an employee. CITY will report the value paid for these services each year to the Internal Revenue Service (I.R.S.) using Form 1099. Withholding of income tax is not deducted from contractual payments. As a result of this, COUNSEL may be subject to I.R.S. provisions for payment of estimated income tax. Consult the local I.R.S. office for current information on estimated tax requirements. Failure to comply may subject COUNSEL to a penalty.

29. Effective Date. The effective date of this agreement shall be the date on which the agreement is executed by the CITY's Mayor.

30. Severability. Should any part of this agreement be declared in a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this agreement, which shall continue in full force and effect, provided that the remainder of this agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

31. Immigration Law Compliance. Under the provisions of A.R.S. §41-4401, the Contractor warrants to the City that the Contractor and all its subcontractors will comply with all Federal Immigration laws and regulations that relate to their employees and that the Contractor and all its subcontractors now comply with the E-Verify Program under A.R.S. §23-214(A).

A breach of this warranty by the Contractor or any of its subcontractors will be considered a material breach of this Contract and may subject the Contractor or subcontractor to penalties up to and including termination of this Contract or any subcontract. The Contractor will take appropriate steps to assure that all subcontractors comply with the requirements of the E-Verify Program. The Contractor's failure to assure compliance by all its subcontractors with the E-Verify Program may be considered a material breach of this Contract by the City.

The City retains the legal right to inspect the papers of any employee of the Contractor or any subcontractor who works on this Contract to ensure that the Contractor or any subcontractor is complying with the warranty given above.

The City may conduct random verification of the employment records of the Contractor and any of its subcontractors to ensure compliance with this warranty. The Contractor agrees to indemnify, defend and hold the City harmless for, from and against all losses and liabilities arising from any and all violations of these statutes.

32. Lawful Presence in the United States for Persons

Arizona State law A.R.S. §1-502 (H.B. 2008) requires that all PERSONS who will be awarded a contract and apply for public benefit must demonstrate through a signed affidavit and the presentation of a copy of documentation that they are lawfully present in the United States.

PERSONS is defined as all NATURAL PERSONS/INDIVIDUALS/SOLE PROPRIETORSHIPS as indicated by your W9 Filing. (This law does not apply to LLP's, LLC's, PLLC's, Corporations, Limited Partnerships or General Partnerships)

33. No Preferential Treatment or Discrimination:

In accordance with the provisions of Article II, Section 36 of the Arizona Constitution, the City will not grant preferential treatment to or discriminate against any individual or group on the basis of race, sex, color, ethnicity or national origin.

IN WITNESS WHEREOF, the City of Scottsdale, by its Mayor this 3<sup>rd</sup> day of February, 2015.

City of Scottsdale, a municipal corporation

By: 

W.J. "Jim" Lane, Mayor

Udall Shumway

By: 

Its: Senior Partner

ATTEST:

  
Carolyn Jagger, City Clerk

APPROVED AS TO FORM:

  
Bruce Washburn, City Attorney

**Note to Attorneys: Remember to send along a copy of your Certificate of Insurance with the Contract for Legal Services.**

**RESOLUTION NO. 10011**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING THE MAYOR TO ENTER INTO CONTRACTS FOR LEGAL SERVICES NOS. 2015-022-COS, 2015-023-COS, 2015-024-COS, 2015-025-COS, 2015-026-COS, 2015-027-COS, 2015-028-COS, 2015-029-COS, 2015-030-COS, 2015-031-COS, 2015-032-COS, 2015-033-COS, 2015-034-COS, 2015-035-COS, 2015-036-COS, 2015-037-COS, WITH THE LAW FIRMS OF BROENING, OBERG, WOODS & WILSON, P.C.; DICKINSON WRIGHT PLLC; GUST ROSENFELD; JONES SKELTON & HOCHULI PLC; RIGHI LAW GROUP; HOLLOWAY ODEGARD & KELLY PC; SANDERS & PARKS; JARDINE, BAKER, HICKMAN & HOUSTON; THE HERZOG LAW FIRM, P.C.; THE LAW OFFICES OF ROBERT S. MURPHY, LLC; UDALL SHUMWAY; KLEIN DOHERTY LUNDMARK BARBERICH & LAMONT, PC; RYLEY CARLOCK & APPLEWHITE; STRUCK WIENEKE & LOVE PLC; OSBORN MALEDON PA; RENAUD COOK DRURY MESAROS PA**

**WHEREAS, the City of Scottsdale needs to defend against claims for personal injury, employment, construction, road design, police liability, general municipal liability, water and wastewater, civil appeals, fire services, and worker's compensation; and**

**WHEREAS, from time to time the City of Scottsdale needs outside legal counsel who, by experience and training, are qualified to defend the City against claims for personal injury, employment, construction, road design, police liability, general municipal liability, water and wastewater, civil appeals, fire services, and worker's compensation, and to assist the City Attorney's Office in providing such defense.**

**NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Scottsdale, Maricopa County, Arizona, as follows:**

**Section 1. The Mayor is hereby authorized and directed to execute, on behalf of the City of Scottsdale, Contracts for Legal Services, Nos. 2015-022-COS, 2015-023-COS, 2015-024-COS, 2015-025-COS, 2015-026-COS, 2015-027-COS, 2015-028-COS, 2015-029-COS, 2015-030-COS, 2015-031-COS, 2015-032-COS, 2015-033-COS, 2015-034-COS, 2015-035-COS, 2015-036-COS, 2015-037-COS, with the law firms of Broening, Oberg, Woods & Wilson, P.C.; Dickinson Wright PLLC; Gust Rosenfeld; Jones Skelton & Hochuli PLC; Righi Law Group; Holloway Odegard & Kelly PC; Sanders & Parks; Jardine, Baker, Hickman & Houston; The Herzog Law Firm, P.C.; The Law Offices of Robert S. Murphy, LLC; Udall Shumway; Klein Doherty Lundmark Barberich & Lamont, PC; Ryley Carlock & Applewhite; Struck Wieneke & Love PLC; Osborn Maledon PA; Renaud Cook Drury Mesaros PA.**

PASSED AND ADOPTED by the City Council of the City of Scottsdale, Arizona, this 3<sup>rd</sup> day of February, 2015.

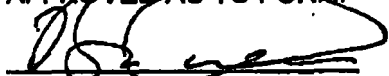
ATTEST:

  
Carolyn Jagger, City Clerk

CITY OF SCOTTSDALE, an Arizona  
municipal corporation

  
W.J. "Jim" Lane, Mayor

APPROVED AS TO FORM:

  
Bruce Washburn, City Attorney